

**LOCALS *VERSUS* FOREIGNERS: THE SIMMERING DISCONTENT OF  
EMPLOYMENT OF FOREIGNERS IN TANZANIA**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF  
LAWS THE OPEN UNIVERSITY OF TANZANIA**

**CERTIFICATION**

The undersigned certifies that he has read and hereby recommends for acceptance by the Open University of Tanzania a dissertation entitled: **“Locals *versus* Foreigners: The Simmering Discontent of Employment of Foreigners in Tanzania.”** in partial fulfillment of the requirements for award of the degree of Master of Laws (LL.M) of the Open University of Tanzania.

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**Dr. Alex Boniface Makulilo**

(Supervisor)

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Date

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## **DECLARATION**

I, **Clement Bernardo Mubanga**, do hereby declare that this dissertation is my own work and that it has not been submitted nor is it being submitted for a Degree in any other University.

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Signature

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Date

**DEDICATION**

To my brother

John Bernardo Mubanga,

In Memoriam.

## ACKNOWLEDGMENTS

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**ABSTRACT**

Overtime there has been growing complaints from the general public on employment of foreigners. Regulatory bodies are prone to these complaints. It is claimed that amid the growing gap of unemployment among the locals, foreigners are seen undertaking jobs that can be manned by the locals. The legal framework on its side sets two conditions with regard to employment of foreigners. First, that foreigners should be employed only in those areas that are short of local expertise. Second, that in case a foreigner is so employed, skills transfer to his/her local counterparts should be made a necessity.

This study aimed at assessing the functioning of the legal and regulatory framework of employment of foreigners. It also sought to find out the truth as to whether foreigners are displacing local jobs. The study was done in Dar Es Salaam while focusing on Tanzania mainland through purposive sampling of respondents from key regulatory bodies and companies actively involved in employment of foreigners. It was found that the legal and regulatory framework is not efficacious thus a need for enactment of a comprehensive law. On the other hand, further research was found to be of necessity to establish the truth whether foreigners are displacing local jobs to the extent of widening the gap of unemployment among the locals.



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## **LIST OF STATUTES/POLICIES**

Employment and Labour Relations Act 2004

Immigration Act Cap 54 R.E 2002

Immigration and Nationality Act 1952

Immigration Regulations R.E 2002

National Employment Policy 2008

National Youth Employment Policy 2007

Tanzania Investment Act Cap 38 R.E 2002

## LIST OF ABBREVIATIONS/ACRONYMS

<b>ATE</b>	-	Association of Tanzania Employers
<b>CTA</b>	-	Carrying on Temporary Assignment
<b>ERB</b>	-	Engineers' Registration Board
<b>ILO</b>	-	International Labour Organisation
<b>INA</b>	-	Immigration and Nationality Act
<b>LST</b>	-	Law school of Tanzania
<b>Ltd</b>	-	Limited
<b>NBAA</b>	-	National Board of Accountants and Auditors
<b>TaESA</b>	-	Tanzania Employment Services Agency
<b>TANESCO</b>	-	Tanzania National Electricity Supply Company
<i>Tolle lege</i>	-	Take and read
<b>TIC</b>	-	Tanzania Investment Centre
<b>TUCTA</b>	-	Trade Unions Congress of Tanzania
<b>US</b>	-	United States

## CHAPTER ONE

### 1.0 INTRODUCTION

#### 1.1 Background to research Problem

Employment of foreigners is a phenomenon that cannot be avoided. Supporters to increasing employment of foreigners propound that the ability to hire foreign workers is an essential ingredient for economic growth.<sup>1</sup> Opponents, on the other hand propound for rigorous rules against employment of foreign workers especially during the period of high unemployment. In so doing, they argue that increased employment of foreigners can lead to a deleterious impact on salaries, compensation and working conditions of their local citizen workers.<sup>2</sup>

Concerns about foreigners have existed side by side with the situation of unemployment. In a situation where unemployment is high, reactions are commonly against increased employment of foreigners. Since unemployment is a global challenge,<sup>3</sup> countries have been devising means to control employment of foreigners in favour of their citizens. As such, seeking of employment in most foreign countries has been a difficult venture. The waves of globalisation and increased integrations have further necessitated state interventions in employment of foreigners.

Policies and legislation for employment of foreigners have been formulated in order to rationalise the phenomenon. For example, the United States (U.S) Immigration and

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Wasem, R.E; *Immigration of Foreign Workers: Labor Market Tests and Protections*-Congressional Research Service (CRS)-Report for Congress, March 30th, 2010 available at [www.crs.gov](http://www.crs.gov) accessed on 22<sup>nd</sup> May, 2013

<sup>2</sup> *ibid*

<sup>3</sup> The Global Employment Trend Report by the International Labour Organisation (ILO) in Geneva, May 2012 at page 5 reveals that a total of 200 million people in the world stand unemployed as of 2012.

Nationality Act (INA) bars the admission of any alien who seeks to enter the U.S for performing skilled or unskilled labour unless it is determined that there are not sufficient U.S workers who are able, willing, qualified, and available and; the employment of the alien will not adversely affect the wages and conditions of similarly employed workers in the U.S.

In Tanzania, the National Employment Policy<sup>4</sup> recognises the role of foreign workers. However, this recognition is limited to those technologies which cannot be manned by the local personnel. Skills transfer is also a precondition for foreigners working with their local counterparts. This condition is inherent in the Immigration Act<sup>5</sup> and the Tanzania Investment Act.<sup>6</sup>

There has been a genuine outcry among the public over the increase of employment of foreigners in the dwindling Tanzanian labour market.<sup>7</sup> Tension has raised following arrangements and proposals for free movement of labour within the East African Community (EAC).<sup>8</sup> The public fears job displacement of Tanzanians by foreigners. To justify employment of foreigners, employers have been claiming that most Tanzanians do not possess requisite skills and courage to undertake employment efficiently.<sup>9</sup> This has further added to more tension among employment seekers. As such, the public projects increased rate of unemployment especially among the youth if employment of

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<sup>4</sup> 2008

<sup>5</sup> Cap 54 R.E 2002[see for example sections 17(3)(c) and 20(1)]

<sup>6</sup> Cap 38 R.E 2002[see for example section 24 (2)]

<sup>7</sup> Habari Leo, Wednesday 27<sup>th</sup> February, 2008, “Wageni wafanyao kazi wachunguzwe kwanza” literally meaning, “Foreigners working in the country should be scrutinized beforehand”

In that same spirit of enhancing free movement of labour within the member states, on 20<sup>th</sup> April, 2013 the East African Legislative Assembly (EALA) passed a Motion for a Resolution advocating for the elimination of work permit fees for citizens of the region. Refer to the Guardian, Saturday 20<sup>th</sup> April, 2013, “EALA calls for end of work permit fees”

<sup>9</sup> Daily News, Saturday 17<sup>th</sup> November, 2012, “Kabaka acts tough on employees”

foreigners is not made rational.<sup>10</sup> The latter requires sound legal and regulatory frameworks.

The national agenda for employment of foreigners both in the public and private sectors underscores two basic requirements. One, that foreigners can be employed in those skills upon which there are no local citizens who are able to undertake them. Two, foreigners must work under limitation to transfer skills to their local counterparts. According to the Staff Circular on Employment of Foreigners in the Public Service,<sup>11</sup> foreigners can be employed in the Public Service for a period of three years only, in the areas namely, Consultancy, Volunteers and where there are no Tanzanians to undertake the jobs.

The above pronouncements require sound legislation and enforcement mechanisms. It is thus a necessity to analyse the functioning of the legal and regulatory frameworks of employment of foreigners in Tanzania particularly at this moment when the EAC (in which Tanzania is a member) is heading towards free labour movements. It is also pertinent to find out the truth in the public outcry of foreign workers replacing local workers thus increasing the rate of unemployment.

## **1.2 Statement of the Problem**

The National Employment Policy admits that there is a growing tendency of investors to employ foreigners in jobs that could be well performed by Tanzanians thus depriving them of the right of employment. It further admits that skills transfer is not effectively

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<sup>10</sup> The Integrated Labour Force Survey, 2006 provides that 13.4% of the youth stood unemployed as of that year.

<sup>11</sup> No.1 of 2000 dated 24<sup>th</sup> March, 2000 with Reference No.C/DC/48/325/01

undertaken.<sup>12</sup> In the same spirit, it is underscored that the problem of unemployment has become so serious that it should be regarded as a major national development challenge.

While (amid globalisation impacts) the EAC is heading towards free labour movements and unemployment rate is widening, little has been done to review the functioning of the legal and regulatory framework of employment of foreigners in Tanzania in response to the rapid changes in economic welfare, social stability and human dignity. It is also yet unknown whether there is a relationship between the growing rate of unemployment and the phenomenon of employment of foreigners in Tanzania.

While foreigners are required to be employed in jobs that cannot be performed by Tanzanians and if at all employed ensure that skills transfer to their local counterparts is fully effected, employers continue employing foreigners in jobs that can be performed by the locals. Similarly, there has remained no mechanism to ensure that skills transfer is brought into effect. As a result, skills transfer has stood at the pleasure of a respective foreigner. This state of affairs has led to public concern upon the future of employment to Tanzanians. If this phenomenon is not addressed effectively there is a likelihood of growth of anti-foreigner sentiments and xenophobia among the unemployed.<sup>13</sup> Indeed this can greatly shake the foundations of diplomatic relations between Tanzania and the international community at large.

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<sup>12</sup> See Item 3.13 of the National Employment Policy

<sup>13</sup> Refer to the May, 2008 killings of foreigners in South Africa with a central sentiment of replacement of jobs by foreigners in Uhuru Newspaper dated 27<sup>th</sup> May, 2008, “Mauaji ya wageni hatima ya Afrika Kusini na Mataifa Mengine” literally meaning, “South African killings of foreigners and its destiny in relation with the international community.” Read also Mtanzania 25<sup>th</sup> May, 2008, “Somo Kutoka Afrika Kusini” literally meaning, “Lesson from South Africa.”



There is thus an urgent need to find out what is amiss in this trend not only with investors and other private employers but also with foreigners employed in the Public Service, a task that this research seeks to modestly address.

### **1.3 Aim and Objectives**

The aim of this study was to assess the effectiveness of laws related to employment of foreigners in Tanzania and the performance of key regulatory bodies with a view of finding truth(s) of complaints from the general public over displacement of local jobs.

On the other hand, specific objectives were as follows:

1. To assess the functioning of legal and regulatory framework of employment of foreigners in Tanzania
2. To examine the extent upon which foreigners are displacing local jobs
3. To find out rational mechanisms of employment of foreigners in Tanzania

### **1.4 Research Questions**

1. How efficacious is the functioning of the legal and regulatory framework of employment of foreigners in Tanzania?
2. To what extent are foreigners displacing local jobs?
3. How best a practice should foreigners be employed in Tanzania?

### **1.5 Rationale**

The growing discontent among Tanzanians over the growing phenomenon of employment of foreigners by private individuals, companies, international organizations and the Government itself needs to be fully addressed. Such a discontent has resulted from the fact that foreigners are viewed as job stealers. If this trend of perception is left

unaddressed, there is likelihood of growth of xenophobia among the public which can later result into open conflicts between the locals and foreigners over employment.

This research sought to find out whether the legal and regulatory framework of employment of foreigners is functioning towards expected policy on employment of foreigners without jeopardizing locals' employment opportunities. It further explored the truth as to whether foreigners are displacing the locals in employment. Establishment of this truth is worth in finding out what are the best mechanisms of employment of foreigners. By doing this, the simmering discontent over employment of foreigners will thus be brought into perspective.

Information obtained in this research was aimed to be published later in order to let the public understand the truth of the phenomenon of employment of foreigners against the locals. Policy makers and regulatory bodies will also be availed of an opportunity to reflect and rethink the way employment of foreigners is regulated. To this effect, employment of foreign manpower can be efficiently used for the benefit of the whole nation, let alone the benefits of the individual foreigner(s).

### **1.6 Research Design and Methodology**

The research design used in this study was descriptive survey. The study sought to collect information from respondents on their insights with regard to laws guiding control and facilitation of employment of foreigners. This aspect was based on respondents from regulatory bodies. From the general public it sought opinions on performance of the regulatory bodies over employment of foreigners.

Both primary and secondary data were collected. While primary data was collected by using both questionnaires and a very limited interview, secondary data was collected from magazines, newspapers, leaflets, books and internet sources.

### **1.6.1 Research Site**

The study covered only mainland Tanzania and was carried out in Dar Es Salaam. The choice of this site was due to the fact that key regulatory bodies were found to be located in the region. It was also due to limitation of funds whereas the researcher resides in Dar Es Salaam. Similarly, companies actively involved in employment of foreigners could be easily accessed.

### **1.6.2 Sampling Technique**

The sampling technique used was by purposive sampling. In this case I targeted individuals who would provide reliable and relevant information of the study. In order to fulfill this method I had to firstly locate samples of respondents. These were chosen from government entities, the International Labour Office (ILO) and companies. With regard to Government Entities I chose the Immigration Department, the Ministry of Labour and Employment, the Ministry of Establishments and the Tanzania National Electricity Supply Company Ltd (TANESCO).

The Immigration Department was chosen owing to the fact that it is the key Government Entity entrusted with matters of entry of immigrants. On the other hand, the Ministry of Labour and Employment was selected with regard to foreigners who seek to be employed in Tanzania by companies and individuals. The Ministry of Establishments on the other hand stepped in with regard to employment of foreigners in public institutions.

Similarly, the ILO was involved owing to its custodianship in International labour matters.

Selection of companies took into consideration those companies which are active only in employment of foreigners. This aimed at getting information that stems from practical experiences. A total of eight different companies were involved.<sup>14</sup> Selection cut across various sectors to wit, broadcasting, agriculture, education, communication, Information and Communications Sector, Medicare and trade. Diversification of sectors took into consideration of stratified responses.

The following section enumerates the instruments used in collection of data from the above entities.

### **1.6.2 Instruments for Data Collection**

Collection of data was effected through questionnaires, a limited interview and literary research. Questionnaires were prepared for respondents from companies. This was done with an aim to extract as much information as possible. Similarly, the instrument was chosen owing to its composition of a large sample of population of respondents compared to all other samples. In addition, questionnaires formed the easiest method compared to the rest.

On the other hand, data collection from the Immigration Department, Ministry of Labour and Employment, Ministry of Establishments, TANESCO and the ILO was effected

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<sup>14</sup> These were Mohammed Enterprises Ltd, NIDA Textile Mills, Sammy Joint Ltd, Talk of the Town, Radar Recruitment, China Geo Engineering Ltd, Tanga Cement and Namera Group of Companies.

through interview. A set of Interview Guided Questions were prepared. From the Ministry of Labour and Employment one key respondent actively involved in determination of work permits was interviewed. Similarly, from the Ministry of Establishments one respondent actively involved in determination for eligibility of foreign employees in public institutions was interviewed.

From the ILO, one respondent based at the International Labour Office in Dar Es Salaam was interviewed. Similarly, one TANESCO employee dealing with applications for foreign employees to work with the company was interviewed.

The Immigration Department formed the largest source of respondents. This was necessitated by the fact that it composed professionals in matters pertaining to employment of foreigners. A total of fifteen immigration officers were interviewed. All of them being stationed at the Immigration Headquarters in Dar Es Salaam. The largest composition among these immigration officers was that from Visa, Passes and Permit sections. This aimed at getting information that originated from officers who were actively involved in issuance of permissions to foreigners who seek to enter and work in Tanzania.

Apart from the above instruments, documentary research was conducted from relevant documents carefully collected by the researcher, from the Immigration Department's Library, the Open University of Tanzania's Library and the Tanganyika Central Library. Internet research further formed a vital source of information.

### **1.6.3 Data collection Challenges**

The process of data collection was featured with a number of challenges.

The first challenge centred in the nature of diversified respondents. As it has been shown in the preliminary parts, the researcher had to reach the Headquarters of the Immigration Department, the Tanzania Investment Centre, the International Labour Office in Dar Es Salaam, the Ministry of Establishments, the Ministry of Labour and Employment, the Tanzania National Electricity Supply Company and a number of companies actively involved in employment of foreigners. This was indeed a challenging task in terms of accessibility.

The second challenge was related to difficulties in getting time to interview respondents from the above entities (save for companies which were supplied with questionnaires). Appointments for interview were time and again interrupted by official duties. It was no wonder to find an active interview session coming to a halt at the very beginning. In order to address this shortcoming, the researcher at some instances requested a variety of respondents to provide detailed written answers to the interviewer's questions.

The third challenge was a delayed response to questionnaires. A number of questionnaires were responded to very late. To overcome this challenge the researcher kept on reminding respondents to reply and refer back the questionnaires to the researcher.

The fourth challenge was related to shortage of relevant domestic literature upon conducting documentary research. While visiting libraries and conducting internet

searching, hours were spent to locate or not at all locating relevant information. The researcher had to efficiently utilize the only available information as the only option to face this challenge.

The fifth challenge was related to limitation of funds in accessing information from such a diversity of respondents, in internet searching and in accessing stationery services. This was exacerbated by the fact that the research was self-funded. To overcome this challenge, the researcher was stationed at the Immigration Headquarters where respondents from various companies actively involved in employment of foreigners were easily accessed. The approach was to meet an agent of a respective company introduce to him or her on the topic and later issue him or her with the questionnaire. This technique served time and monetary resources. With regard to internet and stationery services, the researcher had to find as cheaper sources as possible to attain those services.

### **1.7 Literature Review**

While diligently searching for literature, I came to observe that there is scant domestic literature on the study of employment of foreigners. Little has been featured in newspapers (in form of complaints against employment of foreigners) and unpublished materials. As such, the phenomenon of employment of foreigners in Tanzania has remained in statements of the Employment Policy, Government Directives in form of circulars and leaflets and finally, legislation. I will thus survey the little available domestic literature supported by literature in other jurisdictions.

Carefully observed, the domestic literature on employment of foreigners has rested on two main directions. One, that foreigners should be employed in those areas only where there are no local personnel qualified to undertake the positions. Two, that where foreigners are employed in those areas, skills transfer to the locals should be made a necessity. The two directions acted as a guide in literature review.

The following is an account of some statements showing the above line of directives:

The National Employment Policy<sup>15</sup> promulgates it in the following words quoted *in extenso*

“The Government recognizes the role of foreign workers for the use of technology and skills that are not available locally, particularly those foreign workers who will facilitate the acquisition of the required skills by local personnel, through training for skills transfer in strategic areas. However, there is a growing tendency of investors to employ foreigners in jobs that could be well performed by Tanzanians thus depriving them of the rights of employment and in many cases skills transfer is not effectively undertaken.”

On the other hand, the Immigration Act<sup>16</sup> and its Regulations underline the necessity of possession of requisite skills (which are not locally available) in order for the Principal Commissioner of Immigration Services<sup>17</sup> to grant Residence Permit Class B.<sup>18</sup> Part III of the Tanzania Immigration Form 1(TIF 1) has these words to note;

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<sup>15</sup> 2008 See Item 3.13 of the National Employment Policy

<sup>16</sup> Cap 54 R.E 2002, section 20

<sup>17</sup> Formerly known as the Director of Immigration Services



“It is the Government’s Policy that the economy of Tanzania should be manned by trained and competent citizens. Residence Permit (or replacement therefore[*sic*]) for employment in Tanzania are issued to non-citizens with skills not available at present in Tanzania labour market only on the understanding that effective training programmes in service or otherwise are undertaken with a specified period to produce trained citizens competent to replace them.”

This statement attracts for an analytical search as to what extent it is implemented. The two-tier objectives of issuance of permits to foreigners who possess skills that are locally unavailable and that of skills transfer to the locals seems to remain in policy statements rather than being effectively implemented. In other words, there seems to be no efficacious mechanisms to make the statements effectual.

Similarly, the Tanzania Investment Act<sup>19</sup> while considering the interest of the local personnel in investment by foreigner(s) provides for an immigration quota of up to five persons during the start up period. It further provides that once an addition of foreign manpower is required, the Tanzania Investment Centre, hereinafter termed as TIC will consult the Immigration Department for a consideration of the addition with a view of considering the availability of qualified Tanzanians, complexity of the technology employed by the business enterprise and agreements reached with the investors.

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<sup>18</sup> This category of permit is issued to a person, other than a prohibited immigrant, who has been offered a specified employment in Tanzania as per section 20 of the Act. A prohibited Immigrant is further defined under section 10 of the Act.

<sup>19</sup> Cap 38 R.E 2002 section 24

With regard to employment of foreigners in the Public Service, there has been a similar view. The Government Circular<sup>20</sup> provides thus:

“A foreigner can be employed in the Public Service where there is no qualified Tanzanian who has requisite skills and can be employed for a specified contract not exceeding three years after an approval by the Permanent Secretary in the Ministry of Establishments.” (Translation mine)

Both local pronouncements and international treatises remained in that state of not going into details of showing how the two conditions can be brought into full effect. This research therefore aimed at filling in this gap.

The Immigration Department through its leaflet on Control of Illegal Immigrants<sup>21</sup> declares in a bid to implore the help of the public in control of illegal immigrants provides; *inter alia* that among the problems that can face the nation owing to increase of illegal immigrants is a decrease in employment opportunities. This statement reveals an idea shared with the society at large with regard to employment of foreigners.

Omari Swalehe<sup>22</sup> raises his concern over positions of work taken by foreigners working Tanzania. He is among many other Tanzanians with a simmering discontent over employment of foreigners.

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<sup>20</sup> No.1 of 2000 on “Employment to foreigners in the Public Service” with Reference No.C/DC/48/325/01 dated 24<sup>th</sup> March, 2000 originally appearing “Raia wa kigeni anaweza kufikiriwa katika ajira ya Utumishi wa Umma pale tu ambapo hakuna Mtanzania mwenye sifa zinazotakiwa, na anaweza kuajiriwa kwa mkataba wa muda maalum usiozidi miaka mitatu na kwa kibali cha Katibu Mkuu wa Idara Kuu ya Utumishi wa Umma”

<sup>21</sup> Issued during the 37<sup>th</sup> Trade Fair Item 3.3

<sup>22</sup> Habari Leo Newspaper 27<sup>th</sup> February, 2008

Speaking on the concern of illegal immigrants <sup>23</sup> (which in fact touches the cornerstone of the problem at hand of employment of foreigners in Tanzania) the President of the United Republic of Tanzania had this to note

“We may not see or understand the gravity of the problem at present, but after four or five decades or even a century there will be a serious crisis. We must avoid creating a situation where our grand grand children will come to our graves – with canes seeking to punish us for messing up things in our lifetime”

As noted above, contrary to the domestic line of thought, various authors in other jurisdictions claim that it is only a myth to claim that foreigners can replace foreigners and add up to unemployment. This view is raised by Ann Bernstein and Myron Weiner,<sup>24</sup> Ransford Danso and David A. McDonald,<sup>25</sup> Prata Politics,<sup>26</sup> and Jeff Dayton-Johnson, *et alia*.<sup>27</sup>

Given various differences in socio-economic and political development between Tanzania and those countries upon which the authors’ arguments rest, there is not so far a critical analysis touching the Tanzanian environment in which the phenomenon of employment of foreigners operates thus, necessitating this study.

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<sup>23</sup> Sunday News, 20<sup>th</sup> January, 2008 Kikwete: Lock out aliens

<sup>24</sup> Ann Bernstein and Myron Weiner, (1999) *Migration and Refugee Policies, an Overview*, London Continuum

Ransford Danso and David A.McDonald, South African Migration Project (SAMP); Writing Xenophobia: Immigration and the Press in South Africa. Migration Policy Series No.17

“Unemployment Low, Don’t Worry Foreigners Didn’t Steal Jobs” available at [http://pratapolitics.blogspot.com/2013/06/unemployment-low-don't worry-foreigners.html](http://pratapolitics.blogspot.com/2013/06/unemployment-low-don't-worry-foreigners.html) accessed on 13<sup>th</sup> July, 2013

<sup>27</sup> Jeff Dayton-Johnson, *et alia* (2009) *Migration and Employment*, OECD Development Centre

D'Amuri<sup>28</sup> argues that immigrants do not harm the wages and job prospects of native workers. This argument however is general in character. It is founded on immigrants who perform manual skills such as maids and housekeepers, taxi drivers and chauffeurs, butchers and meat processors, grounds maintenance workers, construction labourers, porters, bellhops and concierges and janitors. Contrary in a country like Tanzania, the situation is different.

Ideally immigrants are not restricted to manual skills. Rather, complaints from the general public reveal that immigrants who possess skills that are locally available find themselves performing works that could otherwise be performed by the locals. In this situation, therefore arguing that immigrants replace “tasks” and not workers as advanced by D'Amuri does not match with the situation prevailing in Tanzania. Neither is the argument that immigrants often supply manual skills, leaving native workers to take up jobs that require more complex skills and even boosting demand for them practicable in Tanzanian context.

As noted at the beginning of this dissertation, employment of foreigners cannot be avoided. Foreign manpower must, however be utilized efficiently for national development, both in production and for effective skills transfer. The legal and regulatory frameworks have unfortunately not attained these important attributes. This study sought to identify best practices to be resorted to in ensuring that the said attributes are attained.

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<sup>28</sup> D'Amuri F (2013) *Immigration and Productive Tasks: Can Immigrant Workers Benefit Native Workers?* An article available at <http://www.voxeu.org/article/how-immigration-can-benefit-native-workers>

It is evident to note that the legal and regulatory frameworks over employment of foreigners seek to efficiently utilize the latter's expertise. In order to attain this, Borjas<sup>29</sup> notes that advantages of natives from immigration is dependent on whether natives are owners of capital and whether immigrants have complementary capital endowments as natives. In order to establish that immigrants have such complementary capital endowments and above all skills which complement those of the natives, mechanisms to monitor entrance of foreigners in the local labour market must be efficient enough. This research sought to test the strength of the Tanzanian legal and regulatory framework in ensuring that foreigners who enter into the domestic labour market are complementary to the local labour power.

Since this work is hinged upon the legal and regulatory framework of employment of foreigners in Tanzania, the next part revisits the same.

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Borjas, G.J (1995) "The Economic Analysis of Immigration" in *Handbook of Labour Economics* , edited by O.Ashenfelter and D.Card, Amsterdam: Elsevier Science B.V, chapter 28, 1697-1760

## **CHAPTER TWO**

### **2.0 LEGAL AND REGULATORY FRAMEWORK**

#### **2.1 Introduction**

This chapter expounds the legal and regulatory framework of employment of foreigners in Tanzania. It points out and describes the role played by regulatory bodies involved in control and facilitation of employment of foreigners. It also locates and describes relevant statutes pertaining to employment of foreigners in Tanzania.

#### **2.1 The Legal Framework**

The employment of foreigners in Tanzania is largely governed by the Immigration Act and the Investment Act. Similarly, the National Employment Policy provides guidance on what should be taken into account when employing foreigners.

The National Employment Policy provides for the issue of employment of foreigners in Tanzania. Basically, the National Employment Policy recognizes the role of foreign workers. The latter are particularly said to be required in those skills and technology which are not locally available. As such their employment means training and transfer of skills to local personnel.

The main objective of the National Employment Policy with regard to employment of foreigners, therefore, is to ensure that foreigners are employed in those areas where there are no local personnel who can manage to cover the posts. In both local and foreign investments, the National Employment Policy insists that work permits should only be

issued to foreigners with regard to avoiding prejudicing skilled Tanzanians an access to employment opportunities.

Further to the matters pertaining to employment of foreigners, the Immigration Act<sup>30</sup> provides for establishment of Alien Immigration Board. This is an advisory body. It is a Board charged with duties to advise the Principal Commissioner of Immigration Services in all matters relating to issuance of residence permits Class B and other authorizations to aliens.

Since it is composed also of Commissioner of Labour and representatives from the Ministry Responsible for trade and industry, institution responsible for planning matters and institution responsible for the Civil service, it thus advises those institutions in their involvement in issuance of licenses to aliens with a view of whether or not the respective business or employment vacancy in which an alien immigrant proposes to be engaged cannot be gainfully filled by citizens of Tanzania.<sup>31</sup>

On the other hand, the Tanzania Investment Act<sup>32</sup> provides for a limit of immigration quota allowed during the start up period of a foreign investment. In this regard, the law tries to restrict employment of foreigners in foreign investments. It further provides for an addition of the quota upon approval by the Tanzania Investment Centre after consultation with the Immigration Department. Being a legislation specifically dealing with investment matters, it ends without detailing the mode of employment and work of foreigners in Tanzania.

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<sup>30</sup> See section 17 of the Act

<sup>31</sup> See section 17(c) of the Act

<sup>32</sup> *supra*

Like the Tanzania Investment Act, the Immigration Act touches the issue of immigration quota. It also provides for applications and grant of permits to foreigners. Basically, the Immigration Act deals with all matters of immigration. As such the matters of employment of foreigners are not in the purview of the Act.

Finally, there is the Employment and Labour Relations Act.<sup>33</sup> As it can be read from its long title; the Act makes provisions for core Labour Rights, establishes basic employment standards, provides a framework for collective bargaining, provides for the prevention and settlement of disputes and for related matters. Under this legislation, therefore, the issue of employment and work of foreigners is not dealt with.

Therefore, the legal framework of employment of foreigners in Tanzania is featured in the National Employment Policy, the Tanzania Investment Act and the Immigration Act. Since the above named statutes are not made specifically to deal with employment matters, it follows that foreigners' employment has only been given a small portion. In other words, the issue at hand is not adequately covered.

As noted in the beginning, the simmering discontent from the public on employment of foreigners in Tanzania cannot be detached from the problem of unemployment in Tanzania. In as much as this is concerned there is need to summarize the situation of unemployment in Tanzania. Similarly, since the issue of migrants in Tanzania is a historical phenomenon, there is also a need to review it in its historical perspectives though in a nutshell. The following chapter covers these two issues.

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<sup>33</sup> Cap 366 R.E 2002



## **2.2 The Regulatory Framework**

The regulatory authorities over employment of foreigners in Tanzania are diversified. There is a close interdependence of decision making depending on the type of employment sought by a foreigner. While the Immigration Department plays a key role, the responsible Ministry over employment matters remains to be the Ministry of Labour and Employment. As such, there are various institutions involved in the process of issuing permits to foreigners depending on the category of profession. For example, a foreigner who seeks to be employed as a teacher must obtain a license to that effect from the Minister for Education and Vocational Training before a permit is granted.

On the other hand, a foreigner who seeks to be employed in a specific profession such as engineering, there must be an approval from a relevant authority such as the Engineers Registration Board (ERB). Accountants are required to clear with the National Board of Accountants and Auditors (NBAA). However, only very few professions follow this mode. To mention but a few, accountants, engineers, doctors, lawyers and teachers. Those occupations which do not fall into the above categories are solely placed in the powers of the Labour and Immigration Departments.

In practice, before employing a foreigner he or she is required to clear his or her immigration status with the Immigration Department. Under this regard, the Immigration Department is empowered to ensure that a foreigner is allowed to enter the United Republic of Tanzania only after fulfillment of the required conditions. These include; a valid passport and visa clearance. It can thus be noted that the Immigration Department is the first regulating authority with regard to foreigners' employment in

Tanzania. It is only when a foreigner has fulfilled all pre-conditions to stay in the United Republic of Tanzania that he or she can proceed to seek for employment.

The Ministry of Labour and Employment (Department of Employment) steps in by authorizing issuance of work permit to a respective foreigner who has adhered to requirements of the Immigration law. Since July 2002 work permits are processed through a tripartite committee called Work Permit Committee on Employment of Foreigners. It is composed of inter-ministerial departments and social partners namely, the Trade Unions Congress of Tanzania (TUCTA), the Association of Tanzania Employers (ATE), Ministry of Home Affairs, President's Office Ministry of Economic Planning and Empowerment, Ministry of Education and Ministry of Trade and Industries. The Committee meets three times in a month to discuss and deliberate on applications for work permits in lieu of prospective foreign workers.

Arrangements for employment of foreigners are made in accordance with the laws regulating industrial and labour relations. In practice, contracts of employment are concluded between an employer and a foreign-employee while the latter is still in his or her country of origin. On top of that, applications for necessary licenses and permits are made by the respective prospective employer.

Another important regulatory authority is the Tanzania Investment Centre. Despite the fact that the Tanzania Investment Centre deals with all matters relating to investments by foreigners, there is also a close link with employment of foreigners. This is aptly so due to the fact that the tendency of foreign investments is to produce employment opportunities which invite foreigners' employment.

In view of this, the Tanzania Investment Centre has officers from the Ministry of Labour and the Immigration Department, to mention but a few. These officers provide a close and necessary link between the Tanzania Investment Centre and the foreigners seeking its services. It is the Tanzania Investment Centre which counter checks the Immigration quota as required by the law.

With regard to foreign employees in the public service, the Ministry of Establishments is of large concern. The Ministry of Establishments offers foreign employees who qualify to be employed in the public service with exemptions from payment of fees. Once the foreigners are cleared, their applications are forwarded to the Principal Commissioner of Immigration Services for issuance of exemption certificates.

Under the current Immigration Act there are three categories of permits issued to foreigners working and living in Tanzania. These are; Class A permit, Class B and C permits. Class A permit is issued to investors; Class B permit is issued to employees while Class C permit is issued to other categories of foreigners including missionaries, students and volunteers. Among the three categories, it is Class B permit which involves the Ministry of Labour and Employment. So to speak, the rest of categories are under a close authority of the Immigration Department during their issuance. In order to ensure that the said permits are issued to legitimate foreigners, employers' entities are investigated and examined accordingly.

In addition to the above classes there is a temporary permit called Carrying on Temporary Assignment (CTA). This is issued by the Immigration Department for a

period of three non-renewable months. It is a pass allowing a foreigner to undertake a temporary assignment or work.

In a nutshell, as noted in the introductory statement of this sub-section, the regulatory framework of employment of foreigners is diversified. It thus requires an official dealing with issuance of permits to apply a high standard of professionalism in order to ensure that all respective regulatory authorities are involved in the process of issuance of the same. Regard must be had, however, to high integrity and commitment towards protection of the interests of the country.

In conclusion, the legal and regulatory framework of employment of foreigners in Tanzania has such a feature of being stratified as shown in the above descriptions.

## CHAPTER THREE

### 3.0 UNEMPLOYMENT AND THE QUESTION OF MIGRANTS

#### 3.1 The General Global Unemployment Problem

The world is experiencing a steady increase in the rate of unemployment especially amongst the youth.<sup>34</sup> The Global Employment Trend Report<sup>35</sup> shows that unemployment rate is set to increase and the number of unemployed worldwide is projected to rise by 5.1 million in 2013 and by another 3 million in 2014 as compared to the Global Employment Trend Report<sup>36</sup> which showed that a total of 200 million of which 75 million being youth, stood unemployed as of 2012. In the US, unemployment to the natives stood at 6.8 percent in the second quarter of 2000, 8 percent in the second quarter of 2007 and it has increased to 13.7 percent in the second quarter of 2013.<sup>37</sup>

In order to accommodate the 40 million new entrants in the labour market annually, the world is required to create 600 million jobs over the next ten years in addition to the 200 million already unemployed. With the growing trend of unemployment globally, countries are devising means to create employment to its locals both internally or externally.<sup>38</sup>

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<sup>34</sup> Both the National Employment Policy of 2008 and the National Youth Employment Policy of 2007 define a youth as a male or female person aged between 15 to 35 years.

<sup>35</sup> 2013 available at <http://www.ilo.org> accessed on 6<sup>th</sup> October, 2013

<sup>36</sup> Published by the ILO in May, 2012 in Geneva at p.5

<sup>37</sup> According to the study by the Center for Immigration Studies by Steven A. Camarota in the paper: “the Employment Situation of Immigrants and Natives in the Second Quarter of 2013.

See quotations on pg 3 of the main work by Derek, et al at pages 830 and 832. Similarly, it is an accepted truth that while globalization is continually gaining momentum, the regulation and restriction on employment of foreigners is being strengthened in many countries leading to difficulties in getting employed in a foreign country

Tanzania is not an isolated country in this trend. The Integrated Labour Force Survey Report<sup>39</sup> provides that the unemployment rate by the year 2006 stood at 11.7% for persons aged 15 years and above. Such unemployment is dependent on locality. In rural areas it stood at 7.5%, in other urban areas (excluding Dar Es Salaam which stood at 31.5%) it stood at 16.5%. It further provides that about 13.4% of the total youth work force was unemployed. The above figures are expected to have risen tremendously owing to the increase in tertiary, technical and secondary education.<sup>40</sup>

Given the definitions of employment and unemployment provided in the National Employment Policy 2008,<sup>41</sup> the so called employed persons in rural and urban areas are actually engaged in works which do not enable them to meet their daily basic needs. Thus the figure of 91% encompassing a total of persons employed in agriculture (small farm holdings), service or shop sales and elementary occupations does not reflect the real sense of the word employment.

Suffice to note, unemployment is a challenge facing Tanzania. It is not accidental, therefore to find the public in a growing discontent against employment of foreigners especially in those occupations which would have been undertaken by the potential-unemployed persons.

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<sup>39</sup> 2006

<sup>40</sup> The Government under the Ministry of Labour and Employment is due to conduct 2012 research on employment situation as announced in Nipashe ISSN 0856-5414 No.057586 at page 8 dated 03.12.2012. More related information is expected to be available from the awaited National Census Report conducted recently in August, 2012.

The National Employment Policy 2008 defines the word employment to encompass the following: 1. Legally accepted activities, which are within the national accounts production boundary, 2. Activities aiming at attaining decent work goals and, 3. Activities yielding an income at least equivalent to the set sectoral minimum wage. On the other hand, the word unemployment is defined as a situation of total lack of work of an individual. It is viewed as an enforced idleness of potential wage earners or self employed persons that are able and willing to work, but cannot find work.

The worst side of it is that employment of foreigners does not end up with legal employment, rather it goes to employment of illegal immigrants. As such it is worth noting at this juncture the question of migrants in Tanzania notwithstanding data limitation.

### **3.2 Challenge of Migrants in Tanzania**

The challenge of migrants in Tanzania is a historical phenomenon. It is deeply rooted in the 1884-1885 Berlin Conference which partitioned the African continent amongst colonial powers. Asiwaju<sup>42</sup> notes that the colonialists did not pay attention to matters of frontier migrations. Boundaries were thus left permeable as if the international borders had not existed. Frontier migrations were further made inconsiderate of legality owing to mixed races from one country to another that shared the same boundary. Movements from one country to another were seen as a normal business. The legacy to this historical phenomenon cannot be underestimated.

Another accompanied challenge lies in the size of the country. With eight countries bordering it, a vast coastline and only 54 official entry points, it remains prone to illegal immigrants including those transiting through to Southern Africa. This challenge is exacerbated by inadequate resources and technology to combat it.

To avoid expatiation in the history of migrants in Tanzania, I will group them into two; legal migrants (both those who require permits and those who are exempted from the requirement of permits and are issued with exemption certificates instead) and illegal immigrants. Tanzania is continually experiencing an increase in foreign immigrants both

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Asiwaju, A.E(Ed); (1985), *Partitioned Africans*, First Edition, C. Hurst & Co. London University Press at page 225

documented and undocumented. According to the Consultancy Report on Assessment of Performance of Immigration Department in the Current Environment of Increased Transnational Organised Crimes<sup>43</sup> a total number of 37,655 people legally immigrated into Tanzania. The total number was a result of a tremendous increase from 4291 in 2002 to 13,339 in 2006. The number is similarly expected to have risen by the year 2013. In the same period, a total of 260 illegal immigrants were recorded to have immigrated into Tanzania.

Tabling the 2012/2013 budget parliamentary session, the Minister of Labour and Employment noted that a total of 3773 new applications for class B permit (for employment purposes) were received. Among them 2740 were approved while 668 were rejected, 333 were retained pending further investigation and 32 were forwarded to Tanzania Investment Centre (TIC) for confirmation. On the other hand 1222 applications were submitted for renewal of which 963 were approved while the remaining 269 were kept pending for preliminary inquiry. Similarly, a total of 2233 class A permits were submitted by TIC of which 2120 were approved.<sup>44</sup>

The above data encompasses documented immigrants working in various sectors of the economy. There are also undocumented immigrants on the increase in Tanzania. Shitundu<sup>45</sup> points out that the increase has largely been from Kenya and Uganda especially in the education sector particularly in private pre and primary schools. In private businesses the number of immigrants working without appropriate permits was

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<sup>43</sup> Conducted by Mzumbe University in 2007

<sup>44</sup> Refer to the 2012/2013 budget report for the Ministry of Labour and Employment

<sup>45</sup> Shitundu, JM; International Migration Papers 81; a Study on Labour Migration Data and Statistics in East Africa, ILO 2006



high among Indian nationals. In 2000, a total of 700 Asian immigrants were found working without appropriate permits according to the same report.

While the number of legal and illegal immigrants is increasing in the local labour market, the Integrated Labour Force Survey showed that there were a total of 800,000 new entrants in the labour market annually. By the year 2013, the number is tremendously expected to have risen.<sup>46</sup> Comparatively, the ability to absorb the new entrants into the labour market is very low. The above survey reveals the need to protect the local labour market to accommodate only those foreigners whose skills are unavailable in the local market as underscored in the National Employment Policy.

Similarly, the trend calls for efficient strategies that promote employment. While strategies to promote employment are being propounded and/or worked upon, there are genuine complaints over employment of foreigners. The complaints are based on the question of importing foreign workers in those occupations which can otherwise be done by the locals.

In this vein, there is a need to check the role of private employers in recruitment of foreign workers. It is indeed true that importing labour from abroad is much more a political decision than it is in normal business transactions of importing such goods like cars, clothes or electronic devices. Since labour involves people, feelings that are largely absent when goods or services are imported arise either for or against their importation.<sup>47</sup> At this juncture the need for protection of local labour market steps in.

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<sup>46</sup> Another survey to be conducted in December, 2012 will shade light to this view

<sup>47</sup> See p.11 of Bohning, W.R;

The feeling of need for protection of the labour market in Tanzania features also itself under the East African Community (EAC). While the latter is advocating for free movement of labour,<sup>48</sup> the public fears that the regional integration would result in foreigners flooding the country in search of jobs.<sup>49</sup> It stands as a challenge to Tanzanians as to how they will utilize this potentiality of getting employed within the regional member states.

Correspondingly, the executive has been responding by urging the public to fight against illegal immigrants<sup>50</sup> while providing a hope that, matters related to immigration will remain in the prerogative of the member states, even after the proposed political federation.

The diversity of matters relating to unemployment and the challenge of migrants in Tanzania succinctly discussed above has combined in multiplying complaints over employment of foreigners. With this in mind, I now step forward to synchronize all matters discussed in the previous chapters by critically analyzing the practice of employment of foreigners in Tanzania.

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<sup>48</sup> The East Africa Legislative Assembly (EALA) has even called for end of work permit fees in bid of enhancing free movement of workers. See the Guardian, Saturday 20<sup>th</sup> April, 2013  
The Citizen, Monday 7<sup>th</sup> 2008; see also Habari Leo, 27<sup>th</sup> Feb, 2008 on bid to investigate foreign workers  
In a bid to fight against the problem of illegal Immigrants, the Government is embarking on a special operation so called “Operesheni Kimbunga” since September, 2013

## **CHAPTER FOUR**

### **4.0 PRACTICE OF EMPLOYMENT OF FOREIGNERS**

#### **4.1 Introduction Remarks**

As discussed in the previous chapters, the legal and regulatory framework of employment of foreigners in Tanzania works under a guided principle of ensuring that work permits are issued to foreigners who possess skills that are not locally available and where such permits are issued, ensuring that skills transfer is made a necessity. The laws require taking into consideration the availability of qualified Tanzanians, complexity of technology employed by a business enterprise and agreements reached with the investors when any attempt to employ a foreigner is made.

With this in mind, a prudent man is bound to ask oneself a number of questions. How far are foreigners employed in those areas where there are no qualified Tanzanians? Is the complexity of technology assessed? If so, who assesses the complexity of the respective technology? How far are agreements reached between the Government and the investors favourable to Tanzanians? Is transfer of skills by foreign expertise to local personnel as pioneered by the National Employment Policy monitored? If the answer is in the affirmative, by which authority? Do the available regulatory authorities suffice the need to limit the number of foreigners in the dwindling labour market? How far are there mechanisms to verify the authenticity of certificates accompanying applications for residence and work permits effective?

These are pertinent questions that reflect the research objectives. As such, this analysis will largely be guided by jurisprudence of the above questions.

## **4.2 The Practice and Analysis of Employment of Foreigners**

Employment of foreigners in Tanzania can be derived from three groups *to wit*, individual persons, companies or organizations and the Government of the United Republic of Tanzania. All the three groups are required to ensure that before employment of any foreigner all basic immigration formalities are fulfilled. Of large concern here are the preconditions of employment of foreigners whose skills are unavailable and the requirement of skills transfer. It is worthy observing what is actually taking place.

### **4.2.1 Qualification Assessment**

In order to attain this standard, prudence requires sufficient information be supplied to the public with regard to an employment post. This largely hinges on media. The latter encompasses newspapers, magazines, radio, Television, banisters and through social networks to mention but a few. Circulation of such information calls for applications for a given post(s). It is through the said applications that the prospective employers choose suitable applicants and subject them to interviews. After a careful scrutiny suitable candidates are selected for the respective posts. In other words, open competition must be availed the locals. It is through this practice that an employer can establish that no suitable candidate has ever been successful to fill a respective post and thus resort to employment of foreigners who do qualify in lieu of.

One among questions that composed the researcher's questionnaire with regard to this argument was: "Do you think the mode of recruitment of such foreigner(s) <sup>51</sup>was open to competition with the locals?" Approximately 98% of the respondents answered against. They emotionally responded that there was no open competition to the locals. Some went as far as complaining that majority of foreign employees were recruited on family backgrounds and relationships to their foreign counterparts. It was further revealed that in many circumstances posts were never publicly announced. Instead recruitment was directly done from a foreigner's place of residence.

The Tanzania Immigration Form (TIF1) used by both the Labour Commissioner and the Principal Commissioner of Immigration Services in determining an application for first grant or replacement of a work permit and Residence Permit Class B respectively has this important question to ask:<sup>52</sup> "What efforts have you made to obtain job for the citizen?" This question is supposed to be reflected in accompanying documents to the said applications. Paradoxically, respondents revealed that they were not even required to show evidences of diligent search of the locals before employing the foreigners.

One may be prompted to ask oneself; "what are the minimum standards of search for a local employee?" To answer this question, let us review the United States system of Foreign Labour Recruitment.<sup>53</sup>

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This question was preceded by questions that established that in a given company there a foreign employee. There were also other questions inquiring for necessity of employing such foreigner(s) and finally whether there was no qualified Tanzanian(s) who would undertake such position(s)

<sup>52</sup> Item 7-PART III

<sup>53</sup> I have chosen the US system because like our legal system, section 212(a)(5) of the US Immigration and Nationality Act states that any alien who seeks to enter the US for the purpose of performing skilled or unskilled labour is inadmissible, unless the Secretary of Labour has determined and certified to the secretary of State and the Attorney General that there are no sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described and available at the time of application for a visa and admission to US and at the place where the alien is to perform such skilled or unskilled labour

The US Department of Labour has been charged with a responsibility to conduct various vacancy tests prior to admission of foreigners for permanent or temporary employment. In this vein, employers who wish to employ foreigners are required to apply for certification in those vacancies which require certification. **Before filing an application for certification, an employer is required to show how serious attempts were made, but in vain, to recruit American workers** (emphasis added). This is preferably done after an expiry of the waiting period. Such attempts can be through;

- 1) The public referral and recruitment services
- 2) Local Newspapers of general circulation, radio, TV or, for more specialized jobs, trade or professional journals
- 3) Private recruitment agencies, trade unions, colleges, etc

In assessing for the need of foreign labor, a number of preferences have been laid down.

- 1) First preference: persons of extraordinary ability in the arts, sciences, education, business, or athletics, outstanding professors and researchers, and certain multinational executives and managers;
- 2) Second preference: members of the professions holding advanced degrees or persons of exceptional ability
- 3) Third preference: skilled workers with at least two years training, professionals with baccalaureate degrees, and unskilled workers in occupations in which US workers are in short supply.

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and finally that the employment of such alien will not adversely affect the wages and working conditions of workers in the US similarly employed.

- 4) Fourth preference: special immigrants who largely consist of religious workers, certain former employees of the US Government and undocumented juveniles who become wards of the court and,
- 5) Fifth preference: investors who invest at least \$1 million or less money in rural areas or areas of high unemployment to create at least 10 new jobs.

Of great desire here are the requirements of seriousness in search for US workers to fill in vacancies for employment. However the US system does not end up there. It goes as far as establishing mechanisms in place to ensure that employers of foreigners continue adhering to the standards of law. In this regard the US Immigration and Customs enforcement (ICE) agency conducts routine workplace audits to ensure that employers are properly completing and retaining 1-9 forms<sup>54</sup> and that employee information on 1-9 forms matches government records.

While the above are minimum standards of searches for recruitment, this research has revealed that, despite the requirements for diligent efforts to search for a local employee as the law requires, this standard is not met by the Tanzanian regulatory bodies. As a result some of positions that could be performed by the locals fall in the hands of foreigners. It is thus not surprising to find growing complaints from the general public that foreigners are replacing the locals.

With respect to labour certification, however, Bernstein<sup>55</sup> cautions that it works smoothest when the rationale for importing foreign workers is a macro labour shortage,

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<sup>54</sup> These are Employee Eligibility Verification Forms  
 Bernstein, A and Weiner, M (Eds) (1999), *Migration and Refugee Policies, an Overview*, London, Continuum at page 56

that there is little illegal immigration and that the Government has strong local labour market institutions to determine whether there is a real need for foreign workers. Notwithstanding the fact that importing of foreign labour in Tanzania is not a hundred percent macro-labour shortage, the standards of recruitment with regard to dissemination of information to the locals over a given post remain crucial. Thus, non fulfillment of this requirement has a negative implication to the regulatory bodies entrusted with control of employment of foreigners.

#### **4.2.2 Technology Assessment**

One of the main preconditions of determining whether there is need to employ foreigners in a given post is the complexity of technology. This is also applied in determining the need to allow an increase in the immigration quota of foreign investors as provided for under the Tanzania Investment Act.<sup>56</sup>

However, this research has revealed that it remains uncertain as to what extent complexity of a given technology requires employment of foreigners. It further remains uncertain as to which authority an assessment of such complexity is determined. As a result, employment of foreigners on the basis of complexity of technology can, under the circumstances be used as a loophole for grabbing chances of qualified Tanzanians in favour of foreigners.

With regard to foreign expertise it is pertinent to review the mode of assessment of their criteria to be considered for employment. I will provide a few examples.

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S.4 of the Investment Act provides that every business enterprise granted a certificate of incentives under the Act is entitled to an initial automatic immigration quota of up to five persons during the start up period. Any application for an extra person can only be made to the Centre which in return consults the Immigration Department for consideration.



When a post for an accountant is announced, for example, a foreigner who applies for the post is subjected to authoritative scrutiny in terms of his or her academic qualifications. To make it more precise, the available regulatory authorities largely deal with the authenticity of academic qualifications while leaving aside the basic aim of considering the non availability of qualified locals.

Taking an example; upon issuance of Class B permit to an accountant, the Immigration Authorities do demand *inter alia*, a clearance from the National Board of Accountants and Auditors (NBAA); to an engineer, the Immigration Authorities do require the applicant to submit, among other things, a clearance from the Engineers Registration Board (ERB). These and other authorities do assess only, as reiterated above, fulfillment of the required standards of qualifications. I do not object this measure. However, I find a departure from the basic aim of protection of the local market. This is due to the fact that rather than having an authority or authorities to assess the necessity of employing a respective foreigner in preference of a local Tanzanian, a focus is diverged to assessment of the fulfillment of required standards. As a result, the objective of control of employment of foreigners finds itself ineffectual.

The exercise of the above assessment can only be meaningful if there is an efficient mechanism of examination of documents supporting foreigners' applications for work and residence permits to establish their authenticity.

With the development of technology, there has been an increase in forgeries of certificates.<sup>57</sup> Upon interview of one immigration officer whose duty is to scrutinize documents submitted by an applicant for a work permit, to his dismay, he found a certificate with signatures by the Vice Chancellors (both Deputy and Academic) and other components which resembled a university where he completed his undergraduate studies. Only the name of the university and the applicant had been changed. The certificate was printed in such a way that it appeared to have been issued by one university in India! It is no wonder that under the lack of strong mechanisms of verifications of documents, a number of untrustworthy foreigners successfully find chances of employment using forged documents.

This situation multiplies the problem since determination of a given application for work or residence permit largely relies on documents submitted. Given the load of applications for permits reaching the regulatory authorities it is indeed rare to establish authenticity of documents accompanying given applications.

The matter gets worse where corrupt officials step in the whole processes of determination and finally issuing the said permits. This is a concern that was raised by a number of respondents. When it was asked to assess the performance of the Immigration Department, the Ministry of Labour and Employment and the Tanzania Investment Centre with respect to regulation of employment of foreigners, three quarters of the respondents rated them poor while at the same time raising a concern of lack of integrity to a number of officials involved in the process.

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The problem goes as far as involving permits. Suffice it to note is the recent bust of fake permits syndicate involving millions of dollars as reported in the Guardian, Thursday 4<sup>th</sup> April, 2013

The lack of integrity however does not end up with officials involved in determination of applications for permits. It goes as far as involving the locals.<sup>58</sup> It must be remembered that a number of those applications are prepared and submitted to the said authorities by local agents. This is due to the practice commonly advised to process applications for relevant permits while the respective foreigner(s) is/are outside the country. With this in mind I now move to the next important item.

#### **4.2.3. Transfer of Skills**

Time and again skills transfer to the locals has been reiterated in the legal framework. The basis for this is to ensure that upon expiry of a given permit, the locals working with respective foreigners will be in position to undertake duties that were held by the said foreigner. This can be reached where there are purposeful in service training programmes geared at producing competent Tanzanians to replace the foreigners.

Skills transfer is two-sided. It requires an expert to be prepared to transfer his or her skills to his or her subordinates and the latter must be readily prepared to learn such skills with a view of undertaking the respective duties. Majority of respondents raised their voices against foreigners for their unwillingness to impart skills to the locals. In the absence of legal and regulatory mechanisms to ensure that education schemes are implemented with a view to ensure that skills transfer is brought into effect, it follows that the legal requirement of skills transfer from foreigners to the locals will remain theoretical.

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Suffice to note refer to the bust of fake permits syndicate involving millions of dollars as reported in the Guardian, Thursday 4<sup>th</sup> April, 2013

The regulatory bodies are, however facing a number of hurdles in the whole practice of regulation of employment of foreigners in Tanzania. In other words, it is not enough to cast blames upon them only without looking into the other side of the coin. The following section enumerates the main shortcomings.

#### **4.3 Common hurdles in the practice of regulation of employment of foreigners**

Effective regulation of the practice of employment of foreigners has economic implications. This involves not only the regulatory bodies but also the surrounding communities at large. For example, where country A is dependent on external aid from country X its ability to restrict foreigners from country X will be constrained. In other words, its power to speak against the same country it largely depends on for aid will be curtailed. On the other hand, a poverty-stricken community is easily prone to waves of illegal employment of foreigners.

The budgets allocated to Government Ministries and Departments have their role in performance of the regulatory bodies. Owing to the country's low budget allocations, even implementation of day to day functions of the regulatory bodies diminishes. For example, the Immigration Department requires sufficient funds to conduct patrols and investigations in companies to check whether foreign employees do conform to the required standards of the law.

Researches which are also necessary in establishing the status of the local labour market do also require adequate funds. Researches in this area are necessary in the sense that they reveal the realities of the domestic labour market thus showing which areas require foreign labour force or which areas do not. In reality they are supposed to be conducted regularly because conditions of the labour market plus their associated matters vary day

after day. They are the only sources of information to the regulatory bodies who in response to the information can act rationally as to whether foreign employees are required in which sectors.

It is due to this situation the Integrated Labour Force Survey conducted by the Ministry of Labour ever took place in 2006. This was a very crucial survey that composed a number of aspects including the conditions of the local labour market. The latter act as a basis for determination of the need for foreign entrants into the local labour market. Despite the importance of the survey, six years later such a survey had not been made again. Thus, it can be briefly said that budget constraints have a great contribution in the weakening of regulatory performances in the aspect of regulation of employment of foreigners in Tanzania.

Another shortcoming is associated with low technology. Development of Information and Communications Technologies (ICT) has assisted in improvement of the performance of regulatory bodies. However, it has not attained the required standards. Regulatory bodies do require modern equipment such as computers to facilitate their performance. Accompanied to this is the unreliable power supply. Needless to say advancement of technology relies greatly on availability of reliable electric supply which is lacking in Tanzania.

Poor infrastructural facilities such as roads and their associated lack of transport facilities contribute a great deal to the weakening of the performance of the regulatory bodies. The Immigration Department, for example finds it difficult to conduct regular

investigations and patrols in areas that are remote and inaccessible through road networks. Thus foreigners can utilize this weakness to violate the law.

Conditions of work for employees of the regulatory bodies are also determinant in their performance. The employees are largely working under poor environment and receive poor remuneration. This lowers the morale of the said employees. It also creates ground for corrupt practices.

The problem of local agents is worth mentioning here. The so called local agents are Tanzanians who assist foreigners to obtain permits. Being conversant with the procedures of issuance of the permits, it is not uncommon to find them preparing unauthentic documents to support applications for permits. Thus, a foreigner who does not possess skills that are not locally available may find himself/herself holding a position that could have been headed by a local person.

Thus, the weakening of the performance of the regulatory bodies with respect to regulation of employment of foreigners is also associated with a number of shortcomings as briefly outlined above.

In conclusion, the practice of employment of foreigners in Tanzania leaves much to be examined as shown in the above analyses as will be further shown in the forthcoming part.

## **CHAPTER FIVE**

### **5.0 CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Conclusion**

In conclusion, the research has revealed that the legal and regulatory framework is not efficacious. While the law sets conditions to be fulfilled in the course of employment of foreigners it does not go further to show how the conditions should be implemented. As a result even the regulatory bodies fail in the same line to maintain proper mechanisms of employment of foreigners. With regard to displacement of locals' jobs, further research is needed to establish the fact that foreigners are displacing local jobs to the extent of widening the gap of unemployment in Tanzania. On the other hand, the best practices of employment of foreigners can be drawn from the next section.

#### **5.2 Recommendations**

Further to the above conclusions, in order to secure the system of employment of foreigners in Tanzania I recommend for enactment of a comprehensive Law on Employment and Work of Foreigners in Tanzania to be backed up by efficient mechanisms of enforcement. This is due to the fact that enactment of new law encompassing both items of employment and work of foreigners can only be meaningful when regulatory bodies adhere to efficient mechanisms of enforcement. In line with the above, I propose a number of items to be considered by all actors involved in the practice of employment of foreigners in Tanzania.

First, making it clear the accountable regulatory authority with regard to employment of foreigners. This does not mean that it is a single regulatory authority that will deal with

clearance cases of the employment of a given foreigner. Rather, the accountable authority will act as the overseer of the need of employment of foreigners. To put it differently, it is the accountable authority that will authorize employment of a given foreigner(s) according to the needs of the country, lack of qualified Tanzanians to fill the chance and other criteria specified in the law.

Second, exceptions to the normal requirements should be made clear. That is, foreigners who require working in Tanzania without being subjected to the required procedures should be specified in the law. Such workers are those issued with exemption certificates. They do not pay fees for their working permits. These include specific employees in embassies and consulates and specific employees working under special agreements with the Government of the United Republic of Tanzania.

Third, determination of immigration quota in various activities should be reviewed in each year, thus enabling issuance of permits which correspond to the required number of foreigners to be employed in various sectors.

Fourth, areas that require foreigners' employment and those which do not require foreigners' employment except under special circumstances should be carefully listed in the law leaving however a room for responsible authority to add emerging areas or delete others. This will call for an attention to employers who opt to employ foreigners.

Fifth, every employer who proposes to employ a foreigner should be made to advance reasons that justify such a proposal. The law must thus make this condition clear. This



will possibly help in minimizing decisions to employ foreigners without strong reasons to do so. Any default to this should be backed up by necessary sanctions.

Sixth, arrangements of labour exchanges should be made with partner states in order to enhance an availability of employment opportunities and thus reduce the problem of unemployment to Tanzanians who are qualified to undertake such occupations.

Seventh, within every ministry there should be a special section dealing with researches on existing opportunities of employment in capacities falling into their ministries. It must be established by the respective section of the needs available in comparison with the available qualified Tanzanians. The efficient performance of those sections will help feeding necessary information to the regulating authority in order to determine the need to issue work permits to foreign employees.

Eighth, formulating legal mechanisms that will oblige foreign experts to train local personnel within the prescribed periods of their stay. A tendency has been to apply for permits with a view of training local personnel while it is not. Effective legal mechanisms in this aspect backed up by strong enforcement will prove to be beneficial to local personnel already in service and will also reduce the need to employ foreigners. To a foreigner occupying a position for more than five years, it implies, *inter alia*, that training to local personnel who would take the respective position is not fulfilled.

Ninth, mechanisms should be put in place to scrutinize the authenticity of documents accompanying applications for work and residence permits including consulting authorities which issued the same. Regulatory authorities should avoid being perfunctory

in determining applications for work and residence permits of foreigners. Various bodies must be involved in deliberating for the said applications.

Tenth, the Tanzania Employment Services Agency (TaESA) should be empowered to act as a hub of employment information both to employees and employers. It should further regulate the needs to employ a foreigner in preference of local personnel.

Eleventh, the Government should reconsider its budgetary allocations to regulatory bodies dealing with matters of Immigration in order to empower their functioning capacity.

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